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Pan American Peace Plans

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PAN AMERICAN PEACE PLANS

BY

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Chairman of the Delegation of the United States to the Pan American Conference, held in Havana, January–February, 1928

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PAN AMERICAN PEACE PLANS

I.

THE first article of the multilateral Anti-War Treaty, declaring the renunciation of war as an instrument of national policy, is the eloquent and fitting prelude to the engagement of the second article. The signatories "agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means." That is not a profession, but a pledge, positive and comprehensive. That is the heart of the treaty.

It has been said that the second article, as well as the first, will be interpreted in accordance with the expressions of intention to be found in the official statements preceding the signature of the treaty or its ratification. These interpretations were doubtless intended to qualify the renun-

ciation of war, as they apparently contemplate a situation in which war has become an essential method of protection. But the right to resort to defensive measures, which is deemed to be implied, assumes that such measures are *defensive* and cannot be regarded as qualifying the duty to seek peaceful settlements. The fair construction of the agreement would seem to be that every reasonable effort must first be made to obtain a pacific solution and that measures of protection have become necessary only because of the inability to effect such a settlement.

The implications of this pledge in the second article may be found in the obvious reasons for it. Everyone is ready to condemn recourse to wars of aggression, but with no intention of surrendering national rights or what are believed to be just national demands. If these are not reasonably vindicated or satisfied, the question of resort to force will most likely be determined by the keenness of the sense of injury and by the prospect of achieving success in adopting such protective or punitive measures as may be at the command of

power. When the fatal step is taken, it is invariably sought to be justified as essential to national defense. The unsettled grievance, or controversy, is thus the breeding ground of strife which may break out at any time, even in an unsuspected quarter and despite all declarations.

The recent incident in connection with Bolivia and Paraguay is an illustration. The striking lesson of that incident is not simply the need of conciliatory measures, but the danger that lurks in a dispute even when it has dragged along for generations and seems to be the subject for interminable diplomatic discussions. Was there ever a more unlikely cause of war? Here was a tract—in the Gran Chaco—vast in extent, but with few inhabitants, most of them Indians, and presenting the maximum difficulties for colonization and development. Without disparaging its potential importance, it would hardly have been thought that the parties would care to risk their substance in military operations encountering the most formidable obstacles. Moreover, the peaceful intent of both parties had repeatedly been asserted and

agreements had been made looking to adjustment of the dispute. Not long ago, upon the acceptance of the good offices of the Argentine Government, the representatives of the two countries had met in Buenos Aires to endeavor to fix the international boundary or to arrange for an arbitral decision. Yet, despite all these endeavors, military forces of the two states came into collision and the outbreak gave promise of hostilities with far-reaching results. This was due to the fact that each state, accusing the other, declared its honor to be involved and the people of each country instantly rallied to the support of its government in whatever military operations it should decide to undertake. The incident demonstrated once more, and in a dramatic fashion, what a frail reliance declarations of peaceful intention may be if a nation finds itself affronted and the sense of injury suddenly becomes acute. The test of declarations to renounce war is plain and inescapable. It lies in the earnestness and persistence of the effort to dispose of existing controversies and, what is equally important, in the

willingness to set up the machinery to facilitate the peaceful adjustments of such controversies as may arise.

What are "pacific means"? The familiar function of diplomacy needed no treaty to confirm it. The Anti-War Treaty itself is a witness to the fact that opportunities for direct diplomatic negotiations between the parties to an international dispute, essential as these opportunities are, give no satisfactory assurance against war. It is the breakdown of ordinary diplomatic procedure that presages strife and the pledge to resort to pacific means necessarily contemplates that emergency. It implies the obligation to provide the mechanisms which will facilitate peaceful settlement when direct diplomatic exchanges have failed. Pacific means as a remedy for the ills of war must be preventive medicine. The promise to seek peaceful settlements is a barren form of words unless it embraces the establishment and the use of the facilities of conciliation and arbitration. To that undertaking, our Government must be deemed to be committed.

Arbitration is a term loosely used. It may be applied to the submission of any matter to the decision of an outsider. Business men not infrequently leave some difference, which has no legal bearings whatever, to the decision of a friend in whom both parties have confidence. Their inability to agree and their admiration for the sound judgment of the arbitrator lead them to adopt this method to determine what may be a mere matter of practice or policy. Even as to obligations under a contract, the parties may prefer the judgment of a business man on the basis of his sense of equity to a technical decision of legal rights. Arbitrations of this sort are also possible between nations. They may, if they choose, leave to arbitrators the decision of a controversy on whatever basis the arbitrators may think just. But governments have not the freedom of individuals. They are the trustees of national interests and democratic institutions emphasize this relation. Democracies may be as strongly nationalistic as autocracies. Ordinarily, governments do not feel disposed, or even at liberty, to subject a mat-

ter of purely national policy to the decision of outsiders, although it may have given rise to the complaints of other nations. They prefer to stand on their rights and to leave the question to be adjusted, if settled at all, by special agreement. Broad arbitral arrangements, that is, those which embrace questions in the sphere of policy, almost of necessity depend upon an international organization with such an interrelation of interests as to engender confidence that the resulting adjustments will afford a fair degree of protection to national concerns and will be made upon some reasonable basis which may be preferred to the hazard of a conflict of arms. In the absence of such a practical guaranty, nations are naturally inclined to stand on their own footing.

In the narrower sense, arbitration is a form of judicial settlement, that is, it looks to impartial inquiry and a determination, not in the interest of mere expediency or policy, but according to principles commonly accepted. Controversies of a sort which call for the application of such principles may be described as justiciable, and

thus we have a natural classification of international disputes as justiciable and non-justiciable. The principles and rules of conduct which civilized states are deemed to have accepted as governing their relations with each other constitute what we call international law, and within its sphere are found international rights and obligations. The promise to seek solutions by pacific means must be taken to connote that the standards of the law governing all nations are not to be left to be ignored at the caprice of any one, with nothing but assertion on the one side and denial on the other as to legal right and obligation and with the arbitrament of force as the only effective recourse. To leave the law without its tribunal to declare it and to vindicate it by judicial determination appropriate to the case and accepted as binding, would be to make the pledge to resort to pacific means a mocking futility. No nation can fulfil that promise and refuse judicial settlement of questions which call for the application of international law.

Similarly, where nations have entered

into agreements with other nations creating new rights and obligations, their engagement to settle their controversies by pacific means implies that they will make appropriate arrangements for the amicable determination of the questions that may arise as to the interpretation and carrying out of their treaties. Such questions are essentially justiciable. A nation cannot renounce war as an instrument of national policy and insist on force as the arbiter of the controversy arising out of its international agreements. As a nation cannot properly demand that it should be the sole judge in its own cause, where international rights and duties have in any manner been created, the renunciation of war and the promise to seek peaceful settlements necessarily import a pledge to make available international judicial process wherever that is appropriate.

As all arbitrations must rest on agreement, what is called compulsory or obligatory arbitration means arbitration agreed upon before the controversy arises. Such an anticipatory agreement is manifestly an assurance of peace, and if a controversy is

justiciable in its nature there is no valid reason for postponing the making of an agreement for arbitration to a time when national feeling may render the submission more difficult if not impossible. But while this general proposition may readily be accepted, the obstacles to its translation into action have proved to be very great. It may seem to some a simple matter for nations to agree in the interest of peace to arbitrate disputes of every sort. Such critics have had little practical experience. As soon as you touch national interests, you meet conceptions of national rights which in the dominant opinion are to be safeguarded at all hazards.

For example, there is the "independence" of the state. Senator Root once said that he did not see "how a question which involves the independence of a nation can be justiciable, because that means a right of capital punishment." Then, there is the conception of "sovereignty." You meet constantly the objection that a nation will not compromise its sovereignty. This involves the assertion of sovereign power within a sphere which may be ill defined.

There is at times insistence on the exclusion of what are called "constitutional questions," where it is supposed that the submission would be contrary to the Constitution of the state. Cognate to these exceptions is a loose notion of fundamental rights described vaguely by the terms "national honor" and "vital interests." The underlying thought is that there are certain classes of questions which a nation should reserve the right to decide for itself; at least, that it should not agree in advance to leave questions falling within these categories to the decision of outsiders.

Our Government holds an enviable place in the history of arbitration because of the large number of arbitrations to which it has been a party and the efforts it has made to promote this mode of amicable settlement. But it has had great difficulty with agreements for obligatory arbitration. In the latter part of the Cleveland Administration a strong public sentiment was expressed in favor of a general arbitration treaty between the United States and Great Britain, this being regarded as a step toward a plan for all civi-

lized nations. In January, 1897, the Olney-Pauncefote Treaty was signed, with provisions for compulsory arbitration having a wide scope. This treaty was supported not only by the Cleveland Administration but President McKinley indorsed it in emphatic terms in his annual message of December 6, 1897, urging "the early action of the Senate thereon not merely as a matter of policy but as a duty to mankind." But despite the safeguards established by the treaty, the provisions for compulsory arbitration met with disfavor in the Senate and the treaty failed. A series of arbitration treaties was concluded in 1904 by Secretary Hay with about twelve states. Warned by the fate of the Olney-Pauncefote Treaty, Secretary Hay limited the provision in these treaties for obligatory arbitration to "differences which may arise of a legal nature, or relating to the interpretation of treaties existing between the two contracting parties, and which it may not have been possible to settle by diplomacy." Even with this restriction to legal questions, there was added the proviso "provided, never-

theless, that they (the differences) do not affect the vital interests, the independence, or the honor of the two contracting states, and do not concern the interests of third parties." It was also provided that the parties should conclude a "special agreement" in each individual case "defining clearly the matter in dispute, the scope of the powers of the arbitrators, and the periods to be fixed for the formation of the arbitral tribunal and the several stages of the procedure." Notwithstanding the limited scope of these treaties, the Senate amended them by substituting the phrase "special treaty" for "special agreement," so that in every individual case of arbitration a special treaty would have to be made with the advice and consent of the Senate. In view of this change, Secretary Hay announced that the President would not submit the amendment to the other governments.

The Hague conventions of 1899 and 1907, to which the United States is a party, relating to the arbitration of certain classes of international differences, do not make recourse to the tribunal compul-

sory. In 1908, a series of arbitration treaties were negotiated by the United States. Their provisions were limited to "differences which may exist of a legal nature or relating to the interpretation of treaties existing between the two contracting parties and which it may not have been possible to settle by diplomacy," with the proviso that "they do not affect the vital interests, the independence, or the honor of the two contracting states and do not concern the interests of third parties." Secretary Root also provided, taking account of the failure of the Hay treaties, that "in each individual case" the contracting parties before appealing to the arbitral tribunal should conclude a "special agreement" defining the matter in dispute, the scope and powers of the arbitrators, etc., and it was explicitly stipulated that this "special agreement" on the part of the United States should be made by the President by and with the advice and consent of the Senate. These treaties, with these limiting provisions made in deference to the opinion of the Senate as to the

permissible scope of such agreements, received the Senate's approval.

In 1911, the Taft Administration submitted to the Senate general arbitration conventions with Great Britain and with France which were of broad scope. There were numerous objections on the part of the Senate. There was a provision in Article III of the proposed treaty with Great Britain that, in case of a controversy as to whether a particular difference was justiciable, the issue should be determined by a joint high commission. Objection was made that such an arrangement was an unconstitutional delegation of power and the provision was struck out by the Senate. The Senate further conditioned its approval on other reservations, withholding from the operation of the treaty any

> question which affects the admission of aliens into the United States, or the admission of aliens to the educational institutions of the several States, or the territorial integrity of the several States or of the United States, or concerning the question of the alleged indebtedness or monied obligations of any State of the United States, or any question which depends upon or involves the maintenance of the

traditional attitude of the United States concerning American questions, commonly described as the Monroe doctrine, or other purely governmental policy.

In this amended form the treaties were not acceptable to the Administration and remained unratified.

Recent arbitration treaties approved by the Senate, as, for example, those with France and Germany, provide that

all differences relating to international matters in which the High Contracting Parties are concerned by virtue of a claim of right made by one against the other under treaty or otherwise, which it has not been possible to adjust by diplomacy,

which have not been adjusted as a result of reference to an appropriate commission of conciliation,

and which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity, shall be submitted to the Permanent Court of Arbitration established at The Hague by the Convention of October 18, 1907, or to some other competent tribunal, as shall be decided in each case by special agreement, which special agreement shall provide for the or-

ganization of such tribunal, if necessary, define its powers, state the question or questions at issue and settle the terms of reference.

The special agreement in each case is to be made on the part of the United States by the President by and with the advice and consent of the Senate. There is excepted from the provisions of these treaties

any dispute, the subject matter of which (a) is within the domestic jurisdiction of either of the High Contracting Parties, (b) involves the interests of third parties, (c) depends upon or involves the maintenance of the traditional attitude of the United States concerning American questions, commonly described as the Monroe Doctrine, (d) depends upon or involves the observance of the obligations of France (Germany) in accordance with the covenant of the League of Nations.

It was with this background that the subject of obligatory arbitration was approached at the recent Pan American Conference at Washington.

Despite the antagonism of interests, especially in relation to boundaries, the record of the American states in providing for the pacific settlement of their controversies is highly commendable. There

have been approximately two hundred and fifty treaties for arbitration and for the advancement of peace between American states. These include treaties of a general character and those dealing with particular disputes. During the nineteenth century, as Judge Moore states,

> there were eighty-four international arbitrations to which an American nation was a party. In forty, or nearly one-half, of these the other party was a European power, the arbitrations between American nations being forty-four. To about two-thirds of these the United States was a party, the number of arbitrations between other American powers being fourteen.

There have been a number of bilateral arbitration treaties of broad scope between American republics. But for many years it has been the aspiration of the American states to have a multilateral treaty of obligatory arbitration, as a guaranty of the general peace. The most notable plan for such a treaty was adopted at the First Pan American Conference held in Washington, in 1889–90. Its adoption was especially due to the eloquent insistence of Secretary James G. Blaine, and its text

deserves to be perpetuated as a testimonial to a lofty aspiration.

With a preamble stating the belief (forty years ago) "that war is the most cruel, the most fruitless, and the most dangerous expedient for the settlement of international differences," "that the growth of the moral principles which govern political societies has created an earnest desire in favor of the amicable adjustment of such differences," and "that the existing conditions of the respective nations are especially propitious for the adoption of arbitration as a substitute for armed struggles," the representatives of the American states solemnly recommended to their governments "to conclude a uniform treaty of arbitration." The proposed terms were as follows:

Article I. The republics of North, Central, and South America hereby adopt arbitration as a principle of American international law for the settlement of the differences, disputes, or controversies that may arise between two or more of them.

Article II. Arbitration shall be obligatory in all controversies concerning diplomatic and consular privileges, boundaries, territories, indemnities, the

right of navigation, and the validity, construction, and enforcement of treaties.

Article III. Arbitration shall be equally obligatory in all cases other than those mentioned in the foregoing article, whatever may be their origin, nature, or object, with the single exception mentioned in the next following article.

Article IV. The sole questions excepted from the provisions of the preceding articles are those which, in the judgment of any one of the nations involved in the controversy, may imperil its independence. In which case, for such nation, arbitration shall be optional; but it shall be obligatory upon the adversary power.

This plan was signed on behalf of eleven American states. President Harrison, in transmitting the treaty to the Senate, stated that its ratification would "constitute one of the happiest and most hopeful incidents in the history of the Western Hemisphere." No ratifications, however, were filed before the day set by the treaty and the United States suggested an extension of time. But as the treaty was rejected by some important governments of South America, and its revival was advocated only by a few, the negotiations were not

advanced. It does not appear that the treaty was ever called up for consideration in our Senate.

Ever since we have been waiting for the negotiation of a multilateral treaty of obligatory arbitration among the American republics. At the Second International Conference held in Mexico in 1901–1902, there was much discussion of the subject and a project of a treaty was signed by the delegations of nine states. There was an additional project of a Claims Convention which was to be obligatory for five years and was to come into force as soon as five states had ratified it. It was ratified by eight states, including the United States, and was proclaimed by the President of the United States in 1905. The Third Pan American Conference, held at Rio de Janeiro in 1906, adopted a resolution affirming adherence to the principle of international arbitration and recommending instruction to the delegates to The Hague Conference, to be held in 1907, accordingly. A Claims Convention was adopted which continued in force until 1912 the convention of 1902, and this was ratified

by the United States and eleven of the Latin American republics. The Fourth Pan American Conference, which met in Buenos Aires in 1910, adopted a general Claims Convention providing for the submission to the Permanent Court of Arbitration at The Hague, unless both parties agreed to constitute a special jurisdiction, all claims for pecuniary loss or damage which could not be amicably adjusted through diplomatic channels and which were of sufficient importance to warrant the expense of arbitration. This Convention was to remain in force indefinitely, but could be denounced on two years' notice. It was ratified by the United States and by eleven Latin American republics, viz., Guatemala, Dominican Republic, Honduras, Panama, Nicaragua, Paraguay, Ecuador, Bolivia, Brazil, Costa Rica, and Uruguay. It was proclaimed by the President of the United States in 1914. The Fifth Pan American Conference, held at Santiago in 1923, developed an important agreement called the Gondra Treaty, for commissions of inquiry, to which I shall refer later.

It was not until the Sixth Pan American Conference at Havana last year that practical steps were taken to secure a multilateral treaty of obligatory arbitration. Let me repeat the important terms of the Havana resolution:

WHEREAS: The American Republics desire to express that they condemn war as an instrument of national policy in their mutual relations; and

WHEREAS: The American Republics have the most fervent desire to contribute in every possible manner to the development of international means for the pacific settlement of conflicts between States;

1. That the American Republics adopt obligatory arbitration as the means which they will employ for the pacific solution of their international differences of a juridical character.

2. That the American Republics will meet in Washington within the period of one year in a conference of conciliation and arbitration to give conventional form to the realization of this principle, with the minimum exceptions which they may consider indispensable to safeguard the independence and sovereignty of the States, as well as matters of a domestic concern, and to the exclusion also of matters involving the interest or referring to the action of a State not a party to the convention.

It was provided that plenipotentiary

jurisconsults should be appointed for this purpose and that the convention which might be adopted "should leave open a protocol for progressive arbitration which would permit the development of this beneficial institution up to its maximum."

In accordance with this resolution, the representatives of twenty American republics (all save the Argentine Republic) met at Washington in December last and finally succeeded in negotiating a general treaty of inter-American arbitration. This treaty was signed by the representatives of all the states in attendance. Seven of these, Brazil, Cuba, Haiti, Nicaragua, Panama, Peru, and the United States, signed without reservations. I shall refer later to the reservations made by the other signatories; these were of a limited character and do not seriously detract from the importance of the achievement.

It was well understood in advance of the Washington Conference that it was necessary at last to decide whether we could have an effective agreement of obligatory arbitration in this hemisphere. We had had agreement "in principle" for

forty years. To meet under the terms of the Havana resolution with no other result than the proposal of a treaty plainly futile because of exceptions which ate the heart out of the obligation would have been to mock the renunciation of war and to demonstrate the vanity of the effort to set up in this part of the world the necessary institutions of peace. It was equally clear that the effort could not be successful unless the field were suitably limited. It was necessary to recognize the intensity of the national sentiment which exists in every one of the American republics. There could be no hope of a general acceptance of a convention which would subject the exercise of national authority, within its own sphere and without violation of the principles of international law, to the decision of an arbitral tribunal. To safeguard this authority exceptions were necessary. But in order to make obligatory arbitration more than a mere form, it was necessary that the exceptions should be justified in principle and expressed with as much clarity as was obtainable.

The field was limited by selecting, as the

Havana resolution provided, "international differences of a juridical character" or, as the treaty puts it, the parties

> bind themselves to submit to arbitration all differences of an international character which have arisen or may arise between them by virtue of a claim of right made by one against the other under treaty or otherwise, which it has not been possible to adjust by diplomacy and which are juridical in their nature by reason of being susceptible of decision by application of the principles of law.

This limitation is clearly justified because it makes arbitration obligatory in those cases where there are accepted principles to be applied. The law embodies these principles. It is law because it declares rights and correlative obligations which are regarded as binding. Outside the law, there is no accepted standard of obligation. Whatever uncertainty there may be in the law, it affords the only standard that has any certainty whatever. The standards of the law are ascertainable by judicial methods and can be applied by tribunals. As to questions involving mere policy and expediency, in relation to which it may be possible to negotiate special agree-

ments from time to time, it would be impracticable to attempt to promote a general agreement of obligatory arbitration among the American republics.

The treaty goes further and specifically states that there shall be included among questions of a juridical character

> (a) the interpretation of a treaty; (b) any question of international law; (c) the existence of any fact which, if established, would constitute a breach of an international obligation and (d) the nature and extent of the reparation to be made for the breach of an international obligation.

These categories are the same in substance as those which appear in Article 36 of the Statute of the Permanent Court of International Justice providing for the optional acceptance, in these classes of cases, of the jurisdiction of the Court as compulsory *ipso facto* and without special agreement.

No objection can be taken to these categories; they constitute the classic statement of certain questions that are undeniably justiciable. It might perhaps be assumed that as the treaty relates to the settlement of international controversies which arise by virtue of a claim of right

and are juridical in their nature, the reference to the application of the principles of law meant the principles of international law, as that is the law which governs states in their relation to each other. In this sense there might seem to be no occasion for any exceptions whatever save as to the concerns of states not parties to the treaty. But to avoid any possible ground for misapprehension, the treaty expressly excepts those questions which are within the domestic jurisdiction and which international law does not control. The clause containing the only exceptions for which the treaty provides is as follows:

> There are excepted from the stipulations of this treaty the following controversies:
>
> (a) Those which are within the domestic jurisdiction of any of the Parties to the dispute and are not controlled by international law; and
>
> (b) Those which affect the interest or refer to the action of a State not a Party to this treaty.

In making the first exception, there were plainly in contemplation two fields of obligation: those obligations which are created in the exercise of sovereignty and which accordingly fall within the domestic

jurisdiction; and those other obligations which are created by international law and which are not susceptible of final determination through local tribunals without the intervention of an appropriate international tribunal. These two sources—the domestic jurisdiction and international jurisdiction—stand separate, the one governed by the law of the sovereign state, the other governed by international law. When the treaty excepts those controversies "which are within the domestic jurisdiction" and "are not controlled by international law," there was obvious reference to those situations in which matters which otherwise would fall within the domestic jurisdiction have by reason of an international transaction, through treaty, for example, become the subject of international consideration because they import international obligations.

Thus, this exception, as definitely phrased as could be expected, points the natural division of controversies. If a controversy does not arise out of an international transaction, such as a treaty, for example, which creates international ob-

ligations, and the question is not within the range of international law, there is manifestly no recognized international obligation, and, however important a peaceful solution of the difference may be, it belongs in the realm of policy. The treaty of obligatory arbitration was an attempt to give effect to international rights and to make peaceful settlement compulsory through an arbitral determination wherever international law was applicable. It may be noted that, with reference to a matter which by international law "is solely within the domestic jurisdiction," as that expression is used in the eighth paragraph of Article XV of the Covenant of the League of Nations, the Permanent Court of International Justice has said:

> The words "solely within the domestic jurisdiction" seem rather to contemplate certain matters which, though they may very closely concern the interests of more than one State, are not, in principle, regulated by international law. As regards such matters, each State is the sole judge.

The Pan American treaty recognizes, as I have stated, that what might otherwise fall within the domestic jurisdiction exclu-

sively may be brought into the international sphere through an international agreement. States are constantly making treaties, removing causes of difference and establishing rights and obligations with respect to matters which are not governed by international law. But when the treaty or convention is entered into, and international rights and reciprocal international obligations are created, the interpretation of that treaty is not exclusively a domestic matter but one of proper international concern. The state by the exercise of its entire sovereign power cannot escape its international duty. It is therefore essential that in such cases the interpretation of the treaty and its appropriate enforcement should be the subject of consideration by an international tribunal and, as I have said, the promise to have recourse to peaceful settlement is meaningless unless the parties agree to set up the machinery for the interpretation of their international engagements. Where international obligations are involved, the treaty makes no exception, except as states not parties to the convention may be concerned.

It is interesting to note that in the course of the discussions at the Conference in Washington, the Monroe Doctrine was not mentioned. The treaty makes no reference to it and the reason is obvious. The treaty is between the American republics. The Monroe Doctrine may be summarized as being opposed (1) to any non-American action encroaching upon the political independence of American states under any guise; and (2) to the acquisition in any manner of the control of additional territory in this hemisphere by any non-American power. It thus relates to the interests or the action of a non-American state and such states are not parties to the treaty and would not be parties to an arbitration under the treaty. Matters affecting their interests or referring to their action fall within the exception of the treaty relating to third parties.

This Pan American treaty of arbitration could not have been concluded at the Conference in Washington had there not been an atmosphere of amity and a sincere desire to make firm the bonds of peace. The Government of the United States, in

signing this treaty, has given a demonstration, heartily welcomed by its sister republics, of its sincerity in renouncing war as an instrument of national policy and in pledging itself to settlements by pacific means.

II.

THE procedural provisions of the Pan American Treaty of Arbitration are a notable advance on former treaties of this class. When the Conference met at Washington, it was quite clear that the time had come when it was necessary to decide whether the governments were willing to make a definite agreement for compulsory arbitration. The opinion was strongly held in Latin America, if not here, that broad provisions for the *compromis* or the special agreement for each particular submission to arbitration, would render a treaty for obligatory arbitration illusory, so easy would it be to defeat the submission by the failure to make the special agreement in the prescribed manner. Insistence on a plan of that sort would have been fatal to the Conference and would have been regarded as evincing a desire to provide for

obligatory arbitration merely in form while rejecting it in fact.

It is, of course, convenient to have a *compromis* or a special agreement for a particular submission to arbitration under a general treaty, but it has been sought by the present treaty to limit this agreement to mere matters of detail and to afford no avenue of escape from the requirement to arbitrate if the controversy falls within the scope of the treaty. To effect this, definite provision is made for the setting up of a tribunal if the parties do not agree upon a different one. The parties may select any arbitrator or tribunal that they desire. They can, if they choose, submit their controversy to the Permanent Court of International Justice. But what will happen if they do not agree upon an arbitrator or tribunal? That is the test which plans for compulsory arbitration have to meet. The plan of the Pan American treaty is this: Each party is to nominate two arbitrators, of whom only one may be its national or selected from the persons whom it has designated as members of the Permanent Court of Arbitration at The Hague. The

other member may be of any other American nationality. These arbitrators are in turn to select a fifth arbitrator who is to be the President of the court. In case the four arbitrators are unable to agree among themselves for the selection of a fifth American arbitrator, or in lieu thereof of another arbitrator who is not American, each party is to designate a non-American member of the Permanent Court of Arbitration at The Hague and the two persons so designated are to select the fifth arbitrator who may be of any nationality other than that of a party to the dispute. This last provision reflects an endeavor to improve the method of selecting the fifth arbitrator who may have the decision of the case. Instead of leaving the final choice, in the absence of agreement, to the drawing of lots or to a political selection, the choice is to be made by jurists, that is, by designated non-American members of the Permanent Court of Arbitration at The Hague. This aims to secure so far as possible the selection of an impartial and highly qualified person, such as jurists would be likely to choose, who would not

be influenced by political considerations. When the arbitrator or tribunal has been designated by agreement of the parties, or when in default of such an agreement the arbitrators have been selected in the manner stated, the parties are to formulate a *compromis* or special agreement clearly defining the particular subject matter of the controversy, the seat of the court, the rules which are to be observed in the proceedings, and the other conditions to which they may agree. If the parties do not reach an accord on these points within three months from the date of the installation of the court, the agreement is to be formulated by the court itself. The award is to settle the dispute definitively and without appeal. Differences which arise as to the interpretation or execution of the award are to be submitted to the court which rendered it.

It goes without saying that in the last analysis, even with all these provisions, reliance must be placed on the good faith of the nations. In the absence of that, no stipulations will avail. The parties may refuse to nominate arbitrators. They may

refuse to designate members of the Permanent Court of Arbitration for the purpose of selecting the fifth arbitrator if not otherwise agreed upon. They may refuse to carry out the award although it is properly made. But such refusals, where the controversy falls within the scope of the treaty of arbitration, would be manifest breaches of the agreement. Nations are jealous of their good faith and it may be assumed that they will not arbitrarily deny their clear obligations. If they refuse to act under the treaty, it will be upon grounds upon which they think they can defend themselves before public opinion. In the Pan American treaty, means have carefully been provided to secure the submission to arbitration where the controversies are of the character described, and neither party could in such case justify a refusal to nominate arbitrators or to make reasonable arrangements for the details of procedure; and for these last, if it becomes necessary, the court itself may provide. As to the formulation of the precise subject matter of the controversy in case the parties fail to agree upon the formal

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statement, they are protected by the fact that the court would have no jurisdiction to define a subject matter which lay outside the scope of the treaty itself, and, as to matters within the treaty, the provision makes effective to the fullest extent possible the obligation to arbitrate.

By the negotiation of this treaty, which now awaits ratification, the issue is squarely presented to the American republics whether they desire compulsory arbitration of justiciable disputes, that is, of disputes which may be determined by the application of principles of law, with the exception only of such controversies as are within the domestic jurisdiction of any of the parties to the dispute and are not controlled by international law and those which affect the interest or refer to the action of a state not a party to the treaty.

The treaty itself recognizes that reservations may be made. Reservations have a reciprocal effect. That is, it is provided that reservations made by one party shall have the effect that other contracting parties are not bound with respect to the party making the reservation except to the same

extent as that expressed therein. Thirteen states in signing the treaty made reservations which I shall not attempt to describe in detail. Some states desired to reserve their freedom of action with respect to controversies now existing, or which have their origin in situations or acts antedating the present treaty. These reservations will ultimately disappear as existing controversies are disposed of. Most of the other reservations refer to the jurisdiction of local courts. They were designed to make sure that the agreement for arbitration would not impinge upon that jurisdiction, with particular reference to pecuniary claims, thus seeking to embody a doctrine long and widely cherished in Latin America. The following are illustrations of these reservations:

Thus Venezuela provided:

> There shall be excepted from this Treaty those matters which, according to the Constitution or the laws of Venezuela, are under the jurisdiction of its courts; and especially those matters relating to pecuniary claims of foreigners. In such matters arbitration shall not be resorted to except when legal remedies having been exhausted by the claimant it shall appear that there has been a denial of justice.

Chile stated that it did not accept obligatory arbitration

for those questions which, being under the exclusive competency of the national jurisdiction, the interested parties claim the right to withdraw from the cognizance of the established judicial authorities, unless said authorities decline to pass judgment on any action or exception which any natural or juridical foreign person may present to them in the form established by the laws of the country.

The Delegate of Uruguay said:

I vote in favor of the Treaty of Arbitration, with the reservation formulated by the Delegation of Uruguay at the Fifth Pan American Conference, favoring broad arbitration; and with the understanding that arbitration will be resorted to only in case of denial of justice, when the national tribunals have jurisdiction, according to the legislation of their own country.

Colombia's reservation set forth that,

except in the case of a denial of justice, the arbitration provided for in this convention is not applicable to the questions which may have arisen or which may arise between a citizen, an association or a corporation of one of the parties and the other contracting state when the judges or courts of the latter state are, in accordance with its legislation, competent to settle the controversy.

Mexico made the reservation

that differences, which fall under the jurisdiction of the courts, shall not form a subject of the procedure provided for by the Convention, except in case of denial of justice, and until after the judgment passed by the competent national authority has been placed in the class of *res judicata*.

I cannot undertake, in this address, to consider the views which have been expressed with respect to the subject matter of these reservations or as to what constitutes a denial of justice. The parties, of course, may agree to submit international claims to arbitration without recourse to local remedies. In fact this has frequently been done as a means of effectively settling matters which by reason of their nature or complexity may be calculated to lead to international complications. Agreements establishing arbitral tribunals have not infrequently provided that the failure to exhaust local remedies shall not be a bar to a consideration of claims by the tribunal. But, in the absence of an agreement, it has repeatedly been recognized in the diplomatic correspondence of our Government that "the ground of diplomatic interven-

tion in behalf of individuals, for injuries in person or in property, is a denial of justice." In the opinion of the Supreme Court of the United States, delivered by Chief Justice Waite, in *New Hampshire* v. *Louisiana,* 108 U. S. 76, 90, it was said:

> There is no principle of international law which makes it the duty of one nation to assume the collection of the claims of its citizens against another nation, if the citizens themselves have ample means of redress without the intervention of their government.

What constitutes a *denial of justice* depends upon the circumstances of the particular case and cannot well be defined in advance. When the Pecuniary Claims Convention of 1910 (which provides that "the decision shall be rendered in accordance with the principles of international law") was being considered at the Fourth Pan American Conference, Judge Moore, the delegate of the United States, stated

> that he does not consider it feasible to specify, beforehand, precise and inflexible formulas by which the question of denial of justice in all cases can be determined. Much less does he believe that it may be possible to treat the subject as a preliminary

question which can be decided outside of the merits of the case, or that it may be possible to include a clause to this effect in a general treaty of arbitration. In the great number of cases which have been decided by international arbitration during the last one hundred and twenty years, the question of denial of justice, has arisen in numerous and diverse forms which could not have been forseen; nor can human intelligence divine the forms in which it may arise in the future. In the time to come as in past time this question will be resolved by the friendly methods of diplomacy and of arbitration, and in that spirit of mutual respect and conciliation which happily is increasing, more and more, between nations during the course of the years.

With respect to the reservations made to the Pan American Treaty of Arbitration now under consideration, it was pointed out in the discussions at the Washington Conference that their effect was merely to reserve the classes of claims or disputes, to which they referred, from the operation of the treaty of arbitration; that is, the parties by that treaty do not agree to arbitrate what is reserved. Whatever rights or obligations, independently of the treaty, may exist under international law in a particular case are not affected.

The resolution adopted at Havana wisely provided, as I have already stated, for a protocol by which reservations may be abandoned and this protocol was signed by all the parties to the treaty of arbitration. It provides that any party may deposit with the Department of State of the United States with which the original treaty and instruments of ratification rest, an appropriate instrument evidencing that it has abandoned in whole or in part its exceptions or reservations.

CONCILIATION. The difficulties in establishing a scheme of compulsory arbitration, save within the sphere of legal rights and obligations where commonly accepted principles may be applied, have revealed the vast importance of providing instrumentalities of conciliation. These agencies of peace may not be able to render binding decisions or awards. They cannot make agreements for the parties in controversy. But they can conduct inquiries, they can elicit the facts and points of view which underlie the controversy; they can make recommendations for a fair settlement. In

this way, without impinging on the independence or sovereignty of the parties, they may avert strife. Institutions of conciliation are thus the fitting complement of arbitral arrangements, and both supplement the procedure of diplomacy with its direct interchanges and its extended opportunities through international conferences.

The Havana resolution contemplated that the Conference at Washington should provide for conciliation as well as arbitration, and this was done. The necessity for it, as I have said, was thrown into a strong light at the convening of the Conference by the incident between Bolivia and Paraguay. At once the Conference conveyed to the Governments of Bolivia and Paraguay its hope that their differences would be peacefully adjusted, and appointed a special committee charged with the duty of advising the Conference upon the conciliatory measures which might be found feasible. This was the first action of the Conference after its organization and adoption of rules. Soon after, on the recommendation of the special committee

composed of representatives of Brazil, Chile, Cuba, Peru, and the United States, the Conference proffered its good offices to Bolivia and Paraguay and continued the special committee so that it might consider and report upon the developments as they occurred. The good offices were accepted and the special committee completed its work by facilitating the signature of a protocol by the representatives of Bolivia and Paraguay under which a commission of investigation and conciliation was to be established.

The course that may be taken for purposes of conciliation in a serious emergency, where it is impracticable either to secure the immediate determination of the ultimate issue or to provide a definite plan for a final arbitral award, is well illustrated by the terms of this protocol. The parties, in providing for a commission of investigation and conciliation, state their position as follows:

> The representative of Bolivia states that the commission of investigation should ascertain how it happened that, notwithstanding the pacific relations existing between Bolivia and Paraguay and in

spite of the agreement signed at Buenos Aires on July 12, 1928, whereby both countries obligated themselves to settle their territorial differences by pacific means, Paraguay, in violation of those obligations, without previous declaration of hostilities, and in an unfounded and violent manner ordered that the Bolivian outpost "Vanguardia" be attacked and razed by regular forces of the Paraguayan Army on the 5th of the past month of December.

The representative of Paraguay denies that his country has committed any aggression whatever and affirms that Paraguay has always maintained itself within juridical standards and the loyal fulfillment of pacts in force. He adds that it was Bolivia that committed acts of provocation and of aggression by penetrating with its armed forces into the territory possessed by Paraguay, not only in the case of the "Vanguardia" outpost, in which said forces were the first to open fire upon the Paraguayan troops, but that, before that time, it made several incursions in said territory, establishing new outposts. That after the events which took place at the "Vanguardia" outpost forces of the Bolivian regular army invaded the territory possessed by Paraguay, attacking outposts and bombarding Paraguayan positions. That the commission should fully investigate all these facts and the legal antecedents in order to establish upon which country the responsibility falls and which of them is bound to make the proper reparations.

After these statements, it was agreed

that each of the Governments should appoint two delegates and that one delegate should be appointed by each of the following five American republics—the United States, Mexico, Colombia, Uruguay, and Cuba. The Commission is

> to investigate, by hearing both sides, what has taken place, taking into consideration the allegations set forth by both parties, and determining in the end, which of the parties has brought about a change in the peaceful relations between the two countries.

The Commission has been organized and is now proceeding with its work. Under the protocol it is to fulfil its mission within the period of six months from the date of its organization and is to endeavor "to settle the incident amicably under conditions which will satisfy both parties," and if this is not possible it is to render its report setting forth the result of its investigation and its efforts. It is empowered "to establish both the truth of the matter investigated and the responsibilities which, in accordance with international law, may appear as a result of its investigation." Meanwhile, the Governments of Bolivia

and Paraguay have bound themselves to suspend all hostilities and to stop all concentration of troops at the points of contact of the military outposts of both countries. The Commission is authorized to advise the parties concerning measures designed to prevent a recurrence of hostilities. The understanding is expressly stated that the procedure of the Protocol

> does not include nor affect the territorial question, as contended by Bolivia, and the boundaries, as contended by Paraguay, which exists between both countries, nor does it include or affect the agreements in force between them.

But both parties reiterated their firm purpose to settle their controversy, in any event, by juridical means "and in perfect peace and friendship between the two countries."

The success thus achieved through the good offices of the Conference not only had the effect of fostering peaceful relations but conveyed its lesson as to practicable conciliatory measures. The Conference was able to undertake this task because it was in session and could act promptly. Had it been necessary to call representa-

tives of selected governments to a meeting place to act as a council of conciliation, it probably would have been impossible for them to meet in time to accomplish the purpose. The advantage of the moral pressure of the combined effort of a conference of states is clear enough. Plans have several times been suggested for the permanent organization of a board or council of conciliation representing the American republics, but little thought has been given to the practical difficulties of assembling representatives from distant countries in time to take the speedy conciliatory action which a serious emergency may require. Experience shows that a considerable period must be allowed to bring together the representatives of all, or even of a selected group, of the American republics. A board of conciliation to be effective must not only be already established but its members must be together ready to consult with each other and to take action. Commissions of inquiry may be set up more at leisure, but the incident between Bolivia and Paraguay demonstrated the necessity of conciliatory measures and con-

certed good offices even before an inquiry may be instituted.

The Conference at Washington, in approaching the question of conciliatory measures, found it necessary at once to decide what should be done with the Gondra Treaty which had been signed at the Fifth Pan American Conference held at Santiago in 1923. This is a multilateral treaty providing for commissions of inquiry. The purpose is to ascertain the facts, without having an arbitral award, the view being that such an investigation will be in itself helpful and will provide a period for "cooling off." The First Hague Conference, of 1899, proposed a convention for international commissions of inquiry to be established by special agreement. Mr. Martens, the delegate of Russia in that Conference, made a succinct statement, which has never been improved, of the object of such commissions. He said:

> They have already proved the value of their services when a conflict breaks out between two States, each acting in good faith; for example, if a question concerning frontiers arises between them, opinion becomes inflamed in proportion as the incident is

unexpected and public opinion lacks information with regard to it, because opinion is ignorant of the origin and real causes of the conflict. Opinion is at the mercy of momentary impressions and there are many opportunities under these circumstances to irritate the spirits and embitter the disagreement. That is why we desired to provide for the possibility of a commission having for its purpose, first and above all, the search for, and the publishing of, the truth as to the causes of the incident and as to the materiality of the facts. That is the principal business of the commission; it is the principal rôle of the commission; it is named to make a report, and not to make decisions which might bind the parties. But while it is working to make its report, time is gained, and that is the second object we have in view. Spirits grow calmer, and the conflict is no longer acute.

The First Hague Convention, the provisions of which were elaborated and improved at the Second Hague Conference of 1907, related to "disputes of an international nature involving neither honor nor vital interests, and arising from a difference of opinion on points of fact."

In the Knox-Bryce Treaty negotiated by the Taft Administration with Great Britain in 1911, it was agreed that any controversy between the parties which fell

within the scope of the provisions for arbitration, before it had been submitted to arbitrators, "and also any other controversy" thereafter arising, even if it fell outside the arbitration provisions, should be referred "for impartial inquiry and conscientious investigation" to a Joint High Commission of Inquiry which was to be constituted by the designation by each party of three of its nationals. This Joint High Commission was to elucidate the facts, define the issues, and include in its report such recommendations and conclusions as might be appropriate. This treaty, as I have said, did not go into effect, as the Administration did not approve the amendments made by the Senate to the arbitration provisions. In 1913 and 1914, the Bryan Treaties for commissions of inquiry were made with a number of the American states (as well as with other nations) and were approved by the Senate. Their provisions varied somewhat, but in general they referred broadly to all disputes which were not otherwise settled. Under these treaties permanent commissions of investigation were to be set up. It should be

observed, however, that the Bryan treaties have been ratified by only eight of the Latin American republics.

This was the situation at the time of the convening of the conference at Santiago when the multilateral treaty was adopted. This treaty provided for commissions of inquiry in cases of "all controversies which for any cause whatever may arise" which it has been impossible to settle through diplomatic channels or to submit to arbitration in accordance with existing treaties. The parties undertook not to begin mobilization or concentration of troops on the frontier of the other party, nor to engage in any hostile acts or preparations for hostilities from the time steps were taken to convene the commission of inquiry until it had rendered its report or the prescribed limit of time had expired. Any one of the governments directly interested might apply for the convocation of the commission. There was an exception of disputes between states having no general treaties of arbitration where the questions affected constitutional provisions.

A distinct feature of the Gondra Treaty

was the establishment of two permanent commissions with their seats at Washington and Montevideo. These commissions are composed of the three American diplomatic agents the longest accredited in these capitals. Their function under that convention was limited to receiving from the interested parties the request for a convocation of the commission of inquiry and to giving appropriate notice. The party initiating the procedure may address itself to the permanent commission which it considers most efficacious for a rapid organization of the commission of inquiry. The latter commission is to be composed of five members, all nationals of American states, each government appointing two, only one of whom may be its own national. The fifth member is to be chosen by the agreement of the other four, subject to rejection by either of the parties to the controversy, and, if in that event they fail to agree, the designation is to be made by the President of an American republic not interested in the dispute who is to be selected by lot by the commissioners already appointed from a list of not more than six

American Presidents to be made up in a prescribed manner. The decisions and final report of the commission of inquiry may be made by a majority, and the report is to be rendered within a year, with a possible extension of six months. The findings are to be regarded as reports and are not to have the force of judicial decisions or arbitral awards. After the report has been submitted, six months are allowed for renewed negotiations for settlement and after the lapse of this time, if the parties have been unable to reach a friendly arrangement, they "recover entire liberty of action."

It was the general opinion at the Conference in Washington, that it would be unwise to disturb this treaty which had been arrived at after prolonged negotiations. One of the difficulties in dealing effectively with such matters is the very great one of obtaining ratifications after agreements are signed. International conferences have their troubles, but legislatures acting independently often afford the maximum obstacles to peaceful arrangements. It was found at Havana, that five years after the

signing of the Gondra Treaty it had been ratified by only nine of the parties, including the United States, and one of these ratifications had but recently been received. The importance of securing its early ratification was then stressed with the result that during the year 1928 six other powers ratified. With fifteen ratifications in hand and others expected, it was thought to be inadvisable to attempt to disturb the Gondra Treaty by proposing amendments or by doing anything which would affect its prestige and moral authority, quite as important for practical operation as its legal obligations. It was thought best to build upon the foundation of this treaty rather than to attempt to develop a new one which might never become effective.

As it would be impracticable to provide for two distinct commissions of inquiry to deal with the same controversy, and as conciliatory measures would naturally involve investigation, the obvious course seemed to be to provide that the commissions of inquiry set up under the Gondra Treaty should also have the character of

commissions of conciliation. This is the scheme of the Convention of Conciliation adopted at the Washington Conference. The parties agreed to submit to the procedure of conciliation "all controversies of any kind which have arisen or may arise between them for any reason and which it may not have been possible to settle through diplomatic channels." Commissions of inquiry set up under the Gondra Treaty are to have conciliatory functions. Such a commission is at liberty to begin its work with an immediate effort to conciliate the differences submitted to its examination. It is likewise at liberty to undertake conciliation at any time which it may consider favorable during the course of its investigation. And, finally, it is put under a definite obligation to carry out its conciliatory function within the period of six months, while the Gondra Treaty provides for the making of friendly arrangements after the submission of the commission's report. In executing this duty the commission must not only set forth the results of its proceedings but must propose to the parties the bases of an equitable set-

tlement. This report and the commission's recommendations are not to have the character of a judicial decision or an arbitral award and are not to be regarded as binding on the parties either as "the exposition or interpretation of the facts" or as regards questions of law. This qualification like the similar one in the Gondra Treaty is necessary because the function of the commission of conciliation extends to questions which may not be regarded as justiciable and the recommendations are in the nature of the exercise of good offices to bring the parties to an accord, where they may not be willing to submit to an arbitral decision.

The provision, however, that the commissions of inquiry to be set up under the Gondra Treaty should also be commissions of conciliation would leave it to the parties to proceed under the convention and if for any reason they did not do so conciliatory proceedings would not be initiated. To meet this situation, and yet not to set up machinery which would embarrass the carrying out of the Gondra Treaty, a simple plan was devised. That

was to constitute the permanent commissions, established under the Gondra Treaty for the purpose of convoking the commissions of inquiry, commissions of conciliation with immediate authority to act. It will be recalled that these permanent commissions, to which application may be made for the commissions of inquiry, are two in number, each being composed of the three American diplomatic agents longest accredited to the Governments at Washington and Montevideo, respectively. There will thus be normally three diplomatic officials at each of these capitals constituting commissions of conciliation always ready to act. The Washington convention provides that these permanent commissions

> shall be bound to exercise conciliatory functions, either on their own motion when it appears that there is a prospect of disturbance of peaceful relations, or at the request of a party to the dispute, until the commission [that is, the commission of inquiry] is organized.

The words "when it appears that there is a prospect of disturbance of peaceful relations" are significant. One of the diffi-

culties in making a satisfactory agreement for conciliation was found in the apprehension that a permanent commission might attempt to intrude itself into a controversy which was in course of adjustment through diplomatic negotiations between the parties, when neither of the parties desired such an interference although benevolent in intent. Conciliation is not "butting in." Diplomacy is still left to do its perfect, or imperfect, work, and the conciliation treaties must recognize that the parties should have abundant opportunity to settle their own affairs, if they can, without the intrusion of others. Practically, there is little danger of such intrusion, as the difficulty with carrying out programs of conciliation is more likely to be found in inaction rather than in premature activity. But it was necessary to take account of the danger of unwelcome offices, which are never "good," and hence the provision was made for conciliatory measures by the permanent commissions, "on their own motion," only when there was "a prospect of disturbance of peaceful relations."

Of course, it may happen that one or more of the diplomats in Washington or Montevideo will represent parties to the dispute. But this contingency would also be met in the case of any permanent commission which might be set up of representatives of Powers, and which, being already constituted, would be ready to act without delay. The Washington convention provides that the decisions and recommendations of any commission of conciliation shall be made by a majority vote and it is likely that at Montevideo or at Washington there will be diplomatic representatives of countries not engaged in the controversy who will be free to act.

I have referred to the provision in the Gondra Treaty which excepted certain disputes relating to constitutional questions where the parties had no general treaties of arbitration. The conciliation convention adopted at Washington provides that when for any reason the Gondra Treaty does not apply, still the described commission shall be organized so that it may exercise conciliatory functions even though it cannot proceed as a commission

of inquiry under the Gondra Treaty. It is also stipulated that once the procedure of conciliation is under way it shall be interrupted only by a direct settlement between the parties or by their agreement to accept absolutely the decision *ex aequo et bono* of an American chief of state or to submit the controversy to arbitration or to an international court.

Thus the American states represented at the Washington Conference have provided, as broadly as practicable at this time, for conciliation in relation to all disputes that may arise between them. This Convention of Conciliation was signed with but a single reservation (that of Chile, relating to questions arising "from situations or acts prior thereto") and has already been approved by the Senate of the United States and ratified by the President. If the treaty for obligatory arbitration is also approved and ratified, and these two treaties go into effect by the appropriate action of our sister republics, they will afford greater assurance of peace in this hemisphere than any action heretofore taken. Yet they infringe on no sov-

ereign rights, do not offend the sense of national honor or dignity, but are practical arrangements which are the more likely to accomplish the purpose of maintaining peace than efforts to establish academic schemes unsuited to the temper of governments. The Havana Conference was happy in preparing the way for the conference at Washington and these two conferences have had the most beneficial effect in promoting a sound Pan American sentiment and in cementing the bonds of friendship which unite the United States to the independent Latin American republics.

The success of the Washington Conference in reaching such a satisfactory measure of agreement, upon subjects which had so long been discussed and raised so many difficulties, is due primarily to the quality of the representatives of the Latin American republics. They were not only of the highest character but were jurists of distinction, because of their learning and public spirit. The Conference thus had the advantage of the intimate contacts of men who held each other in high esteem. There were no clashes between the members of

the Conference, no distrust to remove, no fears of intrigue to allay, and no intrusions of personal ambition. The members of the Conference as jurists of rank wasted no time in futile arguments over immaterial points or in any ostentatious displays. They were intent, with entire sincerity, on achieving the desired object without friction and without waste of time. The repute of the delegates was well known at the outset, but they parted company at the close of the Conference with heightened mutual respect.

The organization of the Conference facilitated their efforts. It was at once resolved into two general committees, one to deal with the subject of arbitration and the other with that of conciliation. The sessions of these committees, like the plenary sessions of the Conference, were public. In order to provide for detailed and intimate consideration, each general committee appointed a subcommittee of nine members to examine proposals and submit drafts of agreements. In these subcommittees the real work of the Conference was conducted. In order that no ad-

vantage should be taken of those members of the Conference who were not serving on the subcommittees, such members were welcomed at the meetings of the subcommittees if they chose to attend, and provision was made so that all the delegations should be advised of all of the proceedings of the subcommittees and thus be made acquainted with the proposals under discussion. In this way, all members of the Conference were kept in touch with the work of the subcommittees which was continuous and arduous and, in consequence, when the drafts of the two agreements were completed, the delegations were ready to act upon them in the meetings of the general committees called for that purpose.

It is difficult to see how this method of organization could have been improved. There was opportunity for the most intimate and confidential discussion, which is always necessary if an international agreement is to be reached, and there was also fitting occasion for whatever public discussion was desired. No one, I am sure, felt hindered or embarrassed with respect

to the presentation of his views and all felt that the Conference represented the most complete and effective coöperation that has been witnessed in any meeting of the representatives of the American republics. It is this coöperation, this sympathy with the great purposes of peaceful settlement, this mutual confidence in effective collaboration, that is the essence of Pan Americanism.

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